IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8023 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZAVERBEN PUNJABHAI RAGHABHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR KM SHETH for Petitioners

MR RC KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 14/08/2000

ORAL JUDGEMENT

(Per: J.M. Panchal, J.)

Rule. Mr. R.C. Kodekar, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the petition is taken up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate order or direction to set aside and quash the order dated April 15, 2000 passed by the respondent by which application submitted by the petitioners for re-determination of the amount of compensation on the basis of the award of the court is rejected as time barred.

3. The petitioners are owners of Survey Nos. 246, 245, 247, 260, 238/3, 247/1 and 180/4 situated at Village Halol, District Panchmahals. The above referred to lands were acquired by the State Government for the public purpose of construction of Halol diversion road, pursuant to Notification under Section 4(1) of the Land Acquisition Act, 1894 which was published in the Government Gazette on December 1, 1989. The Land Acquisition Officer by his award dated June 11, 1992 offered compensation to the claimants at the rate of Rs.3.22 per square metre. It may be stated that pursuant to the Notification which is referred to above, agricultural lands of others situated at Village Halol were also acquired. Some of the claimants were of the view that compensation offered by the Land Acquisition Officer was inadequate and therefore they had required the Land Acquisition Officer to refer the matter to the Court for determination of an adequate compensation. Accordingly, References were made to the District Court, Panchmahals at Godhra which were numbered as Land Acquisition Reference No.1 of 1993 to Land Acquisition Reference No.14 of 1993. The Reference Court by judgment and award dated October 30, 1999 held that the claimants were entitled to additional amount of compensation at the rate of Rs.45 per square metre alongwith solatium and interest. The present petitioners had not made any application to the Land Acquisition Officer under Section 18 requiring him to refer the matter to the court for determining adequate compensation relating to their lands which were acquired. After learning that the compensation was enhanced by the Reference Court at the instance of other claimants, the petitioners made an application on November 3, 1999 for obtaining certified

copy of the judgment and award dated October 30, 1999 rendered in Land Acquisition Reference No.1 of 1993 to Land Acquisition Reference No.14 of 1993. The certified copy was made ready for delivery on January 20, 2000 and the petitioners had taken delivery of the certified copy on January 24, 2000. Section 28A of the Land Acquisition Act, 1894 provides that where in an award, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other lands covered by the same Notification under Section 4(1) and who are also aggrieved by the award of the Land Acquisition Officer may notwithstanding that they had not made an application to the Land Acquisition Officer under Section 18 by written application to the Land Acquisition Officer within three months from the date of award of the court, require that the amount of compensation payable to them maybe re-determined on the basis of the amount of compensation awarded by the court. Accordingly, the petitioners submitted an application under Section 28A of the Act on April 1, 2000 and requested the Land Acquisition Officer to re-determine the amount of compensation payable to them on the basis of the award of the court. The application submitted by the petitioners under Section 28A of the Act was received by the respondent on April 3, 2000. The respondent was of the view that the application under Section 28A must be filed within three months from the date of the award of the court and as the petitioners had not filed the application within three months from the date of the award of the court, the same was time barred. In view of this conclusion, the respondent rejected the application submitted by the petitioners as time barred by order dated April 15, 2000 giving rise to the present petition.

4. Mr. K.M. Sheth, learned counsel for the petitioners submitted that in view of the proviso to sub-section 1 of Section 28A, in computing the period of three months within which an application has to be made, the date on which the award was pronounced and the time requisite for obtaining a copy of the award has to be excluded and therefore the application submitted by the petitioners under Section 28A could not have been rejected as time barred. Mr. R.C. Kodekar, learned Assistant Government Pleader submitted that the petitioners had not filed application under Section 28A within the time prescribed under Section 28A of the Act and therefore, the petition should be dismissed.

5. We have heard learned counsel for the parties and considered the documents which form part of the petition.

The petitioners have produced certified copy of the award of the court rendered in Land Acquisition Reference No.1 of 1993 to Land Acquisition Reference No.14 of 1993. The endorsements made by the Court Officer, Godhra indicate that the application for obtaining certified copy of the award was made on November 3, 1999 and the certified copy was made ready for delivery on January 20, 2000. The endorsements further show that the petitioners had taken delivery of the certified copy of the award on January 24, 2000. It is an admitted fact that the petitioners had submitted application under Section 28A of the Act on April 1, 2000. As per the proviso to sub-section 1 of Section 28A, in computing the period of three months the date on which the award was pronounced and the time requisite for obtaining a copy of the award has to be excluded. If the time spent in obtaining certified copy of the award is so excluded, we are of the opinion that the application submitted by the petitioners under Section 28A of the Act was within the time prescribed under Section 28A and could not have been rejected as time barred. Therefore, the impugned order is liable to be set aside. For the foregoing reasons, the petition succeeds. The order dated April 15, 2000 rendered by the respondent rejecting the application submitted by the petitioners under Section 28A of the Act as time barred is hereby set aside and quashed. The respondent is directed to decide the application submitted by the petitioners under Section 28A on merits and in accordance with law as early as possible and without any avoidable delay. Rule made absolute accordingly with no order as to costs.

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